IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 3879 OF 2005

Ladakya Badkya Kom. ... Applicant.

Versus.

State of Maharashtra. ... Respondent.

Shri Samir A. Vaidya for the Applicant.

SMs.S.D.Shinde, A.P.P. for the Respondent.

CORAM : ABHAY S. OKA, J.

DATED : 15th July, 2005.

P.C.:

1. Heard the learned Counsel for the Applicant and the learned A.P.P. for the State.

2. Offence alleged against the Applicant and co-accused is under section 302 read with section 34 of the Indian Penal Code. F.I.R. is lodged by one Sanjay Sidhwa Vatara. He has stated that there was a dispute between the present Applicant and the deceased and in fact the deceased was few years back arrested as a result of the complaint filed at the instance of the Applicant. His case is that three persons went to the shop of the deceased. From the shop of deceased they proceeded to the house of the Applicant and thereafter came to the place where the deceased was sitting with the said Sanjay and others.. One of them took a torch from one Vijay Thakare who was present there and the said three persons took the deceased along with them. On the next

day in the morning the dead body of the deceased was found and it was alleged that the deceased was strangulated to death by using a handkerchief and clutch wire of the motor cycle. In the supplementary statement of the complainant, he has stated that three unknown persons took the deceased who were seen walking with the Applicant. The Applicant also went towards the direction in which the said three unknown persons took the deceased in the night at 8.30 p.m.

3. The learned A.P.P. has filed an affidavit of the Police sub-Inspector attached to Kasa Police Station. It is contended that when the Applicant was admitted in Hospital while in custody, he escaped on 6th January 2005 with the help of his son and he was arrested on 9th January 2005. Reliance is placed in the affidavit on the statement of one Shri Sagar Parameshwar Thakur which was recorded under section 164 of the Code of Criminal procedure, 1973 before the Judicial Magistrate. In the said statement the case made out by the said witness is that the Applicant and one Suresh Chordia hired the services of a killer by name Javed Shaikh and it was agreed to pay a sum of Rs.80,000/- to the said killer. The said statement shows that that Suresh Chordia played an active role in employing the killer. The learned A.P.P. submitted that considering the fact that the Applicant escaped from the custody and considering the serious allegation against the Applicant, no case is

made out for enlarging the Applicant on bail.

4. By way of reply, the learned Counsel for the Applicant has placed on record various documents showing the cross-case against the deceased which was registered in the year 2002 in which the deceased was arrested. He has also placed on record a copy of the order dated 29th January 2005 by which the Applicant was ordered to be enlarged on bail in connection with offence registered on the basis of his escape from the custody. In the Application for bail made by the Applicant on 28th January 2005, a case was made out that he did not escape and on his own he has surrendered on 9th January 2005. By the said order dated 29th January 2005 he was enlarged on bail.

5. A copy of the order dated 4th May 2005 passed by this Court in the Application for anticipatory bail filed by the said Suresh Chordia is placed on record. The said application was filed as the said Suresh apprehended his arrest in connection with the same offence. When the bail application was decided on 4th May 2005, this Court considered the allegation that the Applicant Chordia was detained for 17 hours in the Police Station and he was released only after an illegal demand made by the Investigating Officer was fulfilled by the wife of the said Applicant by paying huge amount. The learned Single Judge of this Court recorded

statement of the learned A.P.P. on the basis of the affidavit dated 3rd May 2005 filed by the Investigating Officer that prior to 5th December 2004 the Investigating Officer was not in possession of any material against the Applicant Suresh. After considering the affidavit dated 3rd May 2005 filed by the Investigating Officer, this Court directed that the Applicant Suresh should be enlarged on anticipatory bail. This Court also directed the competent authority to hold an enquiry against the concerned Police Officer and observed that the competent authority, if satisfied, ought to assign the investigation of the present case to an independent agency such as Crime Branch C.I.D. Thane.

6. As stated earlier, the statement of the witness Sagar ascribing more or less identical role to the Applicant herein and the said Suresh Chordia was recorded on 4th January 2005 i.e. four months prior to the date on which the Applicant Suresh was granted anticipatory bail. If the co-accused against whom similar allegation is made of hiring the services of a killer is enlarged on anticipatory bail by this Court after making certain observations which are found in the order, there is no reason why the Applicant should not be enlarged on bail. The investigation is completed long back. Therefore the Applicant deserves to be granted relief of bail. This view is required to be

taken in the light of observations made by this Court in the order dated 4th May 2005. The Applicant is in custody from 8th December 2004. Hence case is made out for grant of bail.

7. In view of the above, the following order is passed:

(i) The Applicant shall be enlarged on bail in connection with C.R.No.I-81/2004 of Kasa Police Station, Thane, subject to furnishing a personal bond of Rs.15,000/- with one or two local sureties in the like amount.

(ii) The bail is granted subject to condition that the Applicant will report to the Kasa Police Station, Thane, once in a week till completion of the trial.

(ii) The Bail is granted subject to condition that the Applicant shall not, directly or indirectly, make any inducement or threat to any prosecution witnesses and shall not in any manner tamper with prosecution evidence.

(iii) The Applicant shall cooperate with the learned Trial Judge for expeditious

disposal of the trial. Any attempt by the Applicant to delay the trial may be a ground for cancellation of bail.

(iv) Any observation made in this order shall not be construed as any finding or any expression of opinion on the merits of the case at the time of trial.

(v) Application is disposed of in above terms.

(vi) The parties to act upon an authenticated copy of this order.

Judge.